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HOUSE BILL 686

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO PROSECUTORIAL AUTHORITY; PROVIDING THE ATTORNEY
GENERAL PRIMARY AUTHORITY TO INVESTIGATE AND PROSECUTE CERTAIN
CRIMES COMMITTED BY OFFICERS OF THE EXECUTIVE AND JUDICIAL
DEPARTMENTS ELECTED ON A STATEWIDE BASIS; INCREASING A PENALTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 1-19-36 NMSA 1978 (being Laws 1979,
Chapter 360, Section 12, as amended) is amended to read:

"1-19-36. PENALTIES--CRIMINAL ENFORCEMENT.--

A. Any person who knowingly and willfully violates
any provision of the Campaign Reporting Act is guilty of a
misdemeanor and shall be punished by a fine of not more than
one thousand dollars (\$1,000) or by imprisonment for not more
than one year or both.

B. Except as provided in Subsections C and D of

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1 this section, the Campaign Reporting Act may be enforced by the
2 attorney general or the district attorney in the county where
3 the candidate resides, where a political committee has its
4 principal place of business or where the violation occurred.

5 C. The attorney general has primary authority to
6 investigate and prosecute a candidate for or an officer of the
7 executive or judicial department elected on a statewide basis
8 for an alleged violation of any of the criminal provisions of
9 the Campaign Reporting Act; except if:

10 (1) the elected officer who allegedly violated
11 the provisions is the attorney general, the governor shall
12 appoint a district attorney who may investigate and prosecute
13 the attorney general; and

14 (2) the candidate who allegedly violated the
15 provisions is a candidate for the office of attorney general,
16 the governor shall appoint a district attorney who may
17 investigate and prosecute the candidate for the office of
18 attorney general.

19 D. Upon the failure or refusal of the attorney
20 general to act pursuant to Subsection C of this section, the
21 district attorney in the county where the alleged violation
22 occurred may investigate and prosecute the elected officer for
23 the alleged violation."

24 Section 2. Section 1-19A-17 NMSA 1978 (being Laws 2003,
25 Chapter 14, Section 17) is amended to read:

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1 "1-19A-17. PENALTIES.--

2 A. In addition to other penalties that may be
3 applicable, a person who violates a provision of the Voter
4 Action Act is subject to a civil penalty of up to ten thousand
5 dollars (\$10,000) per violation. In addition to a fine, a
6 certified candidate found in violation of that act may be
7 required to return to the fund all amounts distributed to the
8 candidate from the fund. If the secretary makes a
9 determination that a violation of that act has occurred, the
10 secretary shall impose a fine or transmit the finding to the
11 attorney general for prosecution. In determining whether a
12 certified candidate is in violation of the expenditure limits
13 of that act, the secretary may consider as a mitigating factor
14 any circumstances out of the candidate's control.

15 B. A person who willfully or knowingly violates the
16 provisions of the Voter Action Act or rules of the secretary or
17 knowingly makes a false statement in a report required by that
18 act is guilty of a fourth degree felony and, if ~~[he]~~ the person
19 is a certified candidate, shall return to the fund all money
20 distributed to that candidate.

21 C. The attorney general has primary authority to
22 investigate and prosecute a candidate for or an officer of the
23 judicial department elected on a statewide basis for an alleged
24 violation of any of the provisions of the Voter Action Act.
25 Upon failure or refusal of the attorney general to act pursuant

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1 to this subsection, the district attorney in the county where
2 the alleged violation occurred may investigate and prosecute
3 the candidate or the elected officer for the alleged
4 violation."

5 Section 3. A new section of Chapter 1, Article 20 NMSA
6 1978 is enacted to read:

7 "[NEW MATERIAL] VIOLATIONS BY STATEWIDE ELECTED
8 OFFICIALS--PRIMARY AUTHORITY OF ATTORNEY GENERAL.--The attorney
9 general has primary authority to investigate and prosecute an
10 officer of the executive or judicial department elected on a
11 statewide basis for an alleged violation of any of the criminal
12 provisions of Chapter 1, Article 20 NMSA 1978; except if the
13 elected officer who allegedly violated the provisions is the
14 attorney general, the governor shall appoint a district
15 attorney who may investigate and prosecute the attorney
16 general. Upon the failure or refusal of the attorney general
17 to act pursuant to this section, the district attorney in the
18 county where the alleged violation occurred may investigate and
19 prosecute the elected officer for the alleged violation."

20 Section 4. Section 6-3-8 NMSA 1978 (being Laws 1963,
21 Chapter 38, Section 2) is amended to read:

22 "6-3-8. VIOLATIONS--PENALTY.--

23 A. Any public official or employee who [~~shall~~
24 ~~violate~~] violates the provisions of [this act shall be] Section
25 6-3-6 NMSA 1978 is guilty of a felony and, upon conviction

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1 [thereof], shall be punished by a fine of not more than ten
2 thousand dollars (\$10,000) nor less than five hundred dollars
3 (\$500) or by imprisonment for a term of not more than ten
4 years, or both, and, in addition thereto, ~~[shall be]~~ is liable
5 for the payment to the state of all amounts expended for any
6 payment made in violation thereof.

7 B. The attorney general has primary authority to
8 investigate and prosecute an officer of the executive or
9 judicial department elected on a statewide basis for an alleged
10 violation of the provisions of this section; except if the
11 elected officer who allegedly violated the provisions is the
12 attorney general, the governor shall appoint a district
13 attorney who may investigate and prosecute the attorney
14 general. Upon the failure or refusal of the attorney general
15 to act pursuant to this subsection, the district attorney in
16 the county where the alleged violation occurred may investigate
17 and prosecute the elected officer for the alleged violation."

18 Section 5. Section 6-10-40 NMSA 1978 (being Laws 1923,
19 Chapter 76, Section 18, as amended) is amended to read:

20 "6-10-40. OFFICIALS RECEIVING CONSIDERATION FOR PLACING
21 LOAN OR DEPOSIT--MISUSING FUNDS--FAILURE TO DEPOSIT--PENALTY.--

22 ~~[Any person holding]~~ A. It is unlawful for a person
23 who holds the office of state treasurer or the office of
24 treasurer of any county, city, town or board in control in this
25 state or ~~[any]~~ who is a public officer or employee having in

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1 [his] the person's custody or [~~under his~~] control any public
2 money [~~who~~] to directly or indirectly [~~receives~~]:

3 (1) receive from any person [~~or persons~~] or
4 body [~~of persons~~], association or corporation for [~~himself or~~
5 ~~otherwise~~] any purpose other than [~~in~~] on the behalf of the
6 state, county, city, town or board in control, whose money is
7 so in [his] the person's custody or [~~under his~~] control, any
8 reward, compensation or profit, either in money or other
9 property or thing of value, in consideration of a loan to or a
10 deposit with any such person [~~or persons~~] or body [~~of persons~~],
11 association or corporation, of any of the public money so in
12 [his] the person's custody or [~~under his~~] control, or in
13 consideration of any other agreement or arrangement touching
14 the use of the money or any part thereof [~~or who shall~~];

15 (2) use or permit the use of any of the money
16 for any purpose not authorized by law [~~or who shall~~];

17 (3) willfully neglect or refuse to deposit the
18 money in [his] the person's custody as required by [~~this act~~]
19 Chapter 6, Article 10 NMSA 1978; or [~~shall willfully~~]

20 (4) deposit the money in [his] the person's
21 custody in any bank, federally insured savings and loan
22 association or federally insured credit union that is not
23 qualified to receive it under the provisions of [~~this act~~]
24 Chapter 6, Article 10 NMSA 1978 or in excess of the amount for
25 which the bank, federally insured savings and loan association

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1 or federally insured credit union may have qualified [~~shall be~~
2 ~~deemed~~].

3 B. A person who violates the provisions of
4 Subsection A of this section is guilty of a felony and, upon
5 conviction thereof, shall be punished by a fine of not more
6 than five thousand dollars (\$5,000) or by imprisonment for not
7 more than ten years or both.

8 C. The attorney general has primary authority to
9 investigate and prosecute an officer of the executive or
10 judicial department elected on a statewide basis for an alleged
11 violation of the provisions of this section; except if the
12 elected officer who allegedly violated the provisions is the
13 attorney general, the governor shall appoint a district
14 attorney who may investigate and prosecute the attorney
15 general. Upon the failure or refusal of the attorney general
16 to act pursuant to this subsection, the district attorney in
17 the county where the alleged violation occurred may investigate
18 and prosecute the elected officer for the alleged violation."

19 Section 6. Section 6-10-53 NMSA 1978 (being Laws 1923,
20 Chapter 76, Section 31) is amended to read:

21 "6-10-53. BRIBERY--PENALTY.--[Any]

22 A. A person [~~or persons~~] who [~~shall~~] directly or
23 indirectly [~~pay~~] pays or [~~give~~] gives or [~~offer~~] offers to pay
24 or give to [~~any one~~] anyone holding the office of state
25 treasurer or the office of treasurer of any county, city or

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1 town or board in control in this state or to [~~any~~] a person [~~or~~
2 ~~persons~~] under such [~~officers'~~] officer's direction for the
3 profit of [~~any~~] such officer or other person [~~or persons~~] any
4 reward or compensation either in money or other property or
5 thing of value in consideration of a loan to or deposit with
6 [~~any~~] such person [~~or persons or body of persons~~], association
7 or corporation of any public [~~monies~~] money in the custody or
8 under the control of [~~such~~] the state treasurer or the
9 treasurer of [~~any~~] a county, city or town or board in control
10 or in consideration of any other agreement or arrangement
11 touching the use of [~~such monies~~] the money or any part thereof
12 for any purpose not authorized by law [~~shall be deemed~~] is
13 guilty of a felony and upon conviction thereof shall be
14 punished by a fine of not more than five thousand dollars
15 (\$5,000) or by imprisonment for not more than ten years or
16 both.

17 B. The attorney general has primary authority to
18 investigate and prosecute an officer of the executive or
19 judicial department elected on a statewide basis for an alleged
20 violation of the provisions of this section; except if the
21 elected officer who allegedly violated the provisions is the
22 attorney general, the governor shall appoint a district
23 attorney who may investigate and prosecute the attorney
24 general. Upon the failure or refusal of the attorney general
25 to act pursuant to this subsection, the district attorney in

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1 the county where the alleged violation occurred may investigate
2 and prosecute the elected officer for the alleged violation."

3 Section 7. A new section of Chapter 8, Article 5 NMSA
4 1978 is enacted to read:

5 "[NEW MATERIAL] CONSTITUTIONAL VIOLATIONS BY STATEWIDE
6 ELECTED OFFICERS--PRIMARY AUTHORITY OF ATTORNEY GENERAL.--The
7 attorney general has primary authority to investigate and
8 prosecute an officer of the executive or judicial department
9 elected on a statewide basis for an alleged violation of the
10 provisions of Article 8, Section 4 of the constitution of New
11 Mexico; except if the elected officer who allegedly violated
12 the provisions is the attorney general, the governor shall
13 appoint a district attorney who may investigate and prosecute
14 the attorney general. Upon the failure or refusal of the
15 attorney general to act pursuant to this section, the district
16 attorney in the county where the alleged violation occurred may
17 investigate and prosecute the elected officer for the alleged
18 violation."

19 Section 8. Section 8-5-3 NMSA 1978 (being Laws 1933,
20 Chapter 21, Section 3) is amended to read:

21 "8-5-3. ACTION IN CIVIL AND CRIMINAL CASES.--[~~That~~]

22 A. Upon the failure or refusal of [~~any~~] a district
23 attorney to act in any criminal or civil case or matter in
24 which the county or state or any department [~~thereof~~] of the
25 county or state is a party or has an interest, the attorney

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1 general [~~be, and he is hereby authorized to~~] may act on behalf
2 of [~~said~~] the county, state or [~~any~~] department [~~thereof~~] if
3 after a thorough investigation such action is ascertained to be
4 advisable by the attorney general [~~provided that~~].

5 B. The attorney general shall, upon direction of
6 the governor, investigate any matter [~~or matters~~] in [~~any~~] a
7 county of the state in which the county or state or [~~any~~]
8 department of the county or state may be interested.

9 C. After [~~such~~] the investigation, the attorney
10 general [~~be, and he is hereby authorized to~~] may take such
11 action as in [~~his~~] the attorney general's opinion conditions
12 warrant.

13 D. The [~~cost of such investigation shall be paid~~
14 ~~out of the general fund of the county wherein such~~
15 ~~investigation shall have been made, and the~~] costs of any
16 prosecution arising out of [~~such~~] the investigation shall be
17 paid as are the costs in cases prosecuted by district
18 attorneys."

19 Section 9. Section 8-6-6 NMSA 1978 (being Laws 1851, Page
20 170, as amended) is amended to read:

21 "8-6-6. MALFEASANCE AND NEGLECT OF DUTY BY STATE AUDITOR
22 OR STATE TREASURER.--

23 A. If the state auditor or state treasurer [~~shall~~
24 ~~wilfully neglect or refuse~~] willfully neglects or refuses to
25 perform any duty enjoined by law, [~~or shall be~~] is guilty of

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1 any oppression or extortion in the performance of any legal
2 duty, [~~or shall receive~~] receives any fee or reward for the
3 performance of any legal duty not allowed by law or by color of
4 [~~his~~] office [~~shall~~] or knowingly [~~do~~] does any act not
5 authorized by law or in any other manner than is required by
6 law, [~~he shall~~] the state auditor or state treasurer is upon
7 conviction upon indictment [~~be adjudged~~] guilty of a
8 misdemeanor in office and shall be fined any sum not exceeding
9 one thousand dollars (\$1,000). The state or any person injured
10 may sue in the name of the state [~~may sue~~], either before or
11 after an indictment found, upon the bonds of the state auditor
12 and the state treasurer for any damages suffered by reason of
13 any of the acts of the auditor or treasurer [~~in this section~~]
14 mentioned in this subsection.

15 B. The attorney general has primary authority to
16 investigate and prosecute the state auditor or state treasurer
17 for a violation of the provisions of this section. Upon the
18 failure or refusal of the attorney general to act pursuant to
19 this subsection, the district attorney in the county where the
20 alleged violation occurred may investigate and prosecute the
21 state auditor or state treasurer for the alleged violation."

22 Section 10. Section 8-6-7 NMSA 1978 (being Laws 1987,
23 Chapter 183, Section 1, as amended) is amended to read:

24 "8-6-7. WRONGFUL DRAWING OR PAYMENT OF WARRANT BY
25 SECRETARY OR TREASURER--PENALTY.--

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1 A. If the secretary of finance and administration
2 draws any warrant on the state treasurer when [~~he~~] the
3 secretary knows or, with the use of available accounting
4 information, should reasonably know that there is an
5 insufficient unexpended and unencumbered balance available for
6 the purpose for which the warrant is drawn, [~~he~~] the secretary
7 is in violation of this section unless the warrant will be
8 redeemed using receivables accrued for that fiscal year
9 pursuant to policies of the department of finance and
10 administration.

11 B. If the state treasurer pays any warrant when
12 [~~he~~] the state treasurer knows or, with the use of available
13 accounting information, should reasonably know that there are
14 insufficient funds available in the treasury for the purpose
15 [~~to pay~~] of paying the warrant, [~~he~~] the state treasurer is in
16 violation of this section unless the warrant will be redeemed
17 using receivables accrued for that fiscal year pursuant to
18 policies of the department of finance and administration.

19 C. A violation of this section is punishable by a
20 fine of not more than one thousand dollars (\$1,000) or by
21 imprisonment for not more than one year or both.

22 D. The attorney general has primary authority to
23 investigate and prosecute the state treasurer for an alleged
24 violation of the provisions of this section. Upon the failure
25 or refusal of the attorney general to act pursuant to this

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1 subsection, the district attorney in the county where the
2 alleged violation occurred may investigate and prosecute the
3 state treasurer for the alleged violation."

4 Section 11. Section 10-16-14 NMSA 1978 (being Laws 1967,
5 Chapter 306, Section 14, as amended) is amended to read:

6 "10-16-14. ENFORCEMENT PROCEDURES.--

7 A. The secretary of state may refer suspected
8 violations of the Governmental Conduct Act to the attorney
9 general, district attorney or appropriate state agency or
10 legislative body for enforcement. [~~If a suspected violation~~
11 ~~involves the office of the secretary of state, the attorney~~
12 ~~general may enforce that act. If a suspected violation~~
13 ~~involves the office of the attorney general, a district~~
14 ~~attorney may enforce that act.] The attorney general has
15 primary authority to investigate and prosecute an officer of
16 the executive or judicial department elected on a statewide
17 basis for an alleged violation of any of the provisions of the
18 Governmental Conduct Act; except if the elected officer who
19 allegedly violated the provisions is the attorney general, the
20 governor shall appoint a district attorney who may investigate
21 and prosecute the attorney general. Upon the failure or
22 refusal of the attorney general to act pursuant to this
23 subsection, the district attorney in the county where the
24 alleged violation occurred may investigate and prosecute the
25 elected officer for the alleged violation.~~

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1 B. Violation of the provisions of the Governmental
2 Conduct Act by any legislator is grounds for discipline by the
3 appropriate legislative body.

4 C. If the attorney general determines that there is
5 sufficient cause to file a complaint against a public officer
6 removable only by impeachment, ~~[he]~~ the attorney general shall
7 refer the matter to the house of representatives of the
8 legislature. If within thirty days after the referral the
9 house of representatives has neither formally declared that the
10 charges contained in the complaint are not substantial nor
11 instituted hearings on the complaint, the attorney general
12 shall make public the nature of the charges, but ~~[he]~~ the
13 attorney general shall make clear that the merits of the
14 charges have never been determined. Days during which the
15 legislature is not in session shall not be included in
16 determining the thirty-day period.

17 D. Violation of the provisions of the Governmental
18 Conduct Act by any public officer or employee, other than those
19 covered by Subsection C of this section, is grounds for
20 discipline, including dismissal, demotion or suspension.
21 Complaints against executive branch employees may be filed with
22 the agency head and reviewed pursuant to the procedures
23 provided in the Personnel Act. Complaints against legislative
24 branch employees may be filed with and reviewed pursuant to
25 procedures adopted by the New Mexico legislative council.

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1 Complaints against judicial branch employees may be filed and
2 reviewed pursuant to the procedures provided in the judicial
3 personnel rules.

4 E. ~~[Subject to the provisions of]~~ Except as
5 otherwise provided in this section, the provisions of the
6 Governmental Conduct Act may be enforced by the attorney
7 general ~~[Except as regards legislators or statewide elected~~
8 ~~officials]~~ or a district attorney in the county where a person
9 who allegedly violated the provisions resides or where [a] an
10 alleged violation occurred ~~[may also enforce that act].~~
11 Enforcement actions may include seeking civil injunctive or
12 other appropriate orders."

13 Section 12. Section 10-16A-7 NMSA 1978 (being Laws 1993,
14 Chapter 46, Section 45) is amended to read:

15 "10-16A-7. CRIMINAL PENALTIES.--

16 A. Any person who knowingly and willfully violates
17 any of the provisions of the Financial Disclosure Act is guilty
18 of a misdemeanor and shall be punished by a fine of not more
19 than one thousand dollars (\$1,000) or by imprisonment for not
20 more than one year or both.

21 B. The attorney general has primary authority to
22 investigate and prosecute an officer of the executive or
23 judicial department elected on a statewide basis for an alleged
24 violation of the provisions of this section; except if the
25 elected officer who allegedly violated the provisions is the

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underscored material = new
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1 attorney general, the governor shall appoint a district
2 attorney who may investigate and prosecute the attorney
3 general. Upon the failure or refusal of the attorney general
4 to act pursuant to this subsection, the district attorney in
5 the county where the alleged violation occurred may investigate
6 and prosecute the elected officer for the alleged violation."

7 Section 13. Section 10-17-12 NMSA 1978 (being Laws 1951,
8 Chapter 13, Section 1) is amended to read:

9 "10-17-12. WILLFUL NEGLECT OF DUTY--PENALTY.--

10 A. When any duty is or shall be enjoined by law
11 upon any public officer or upon any person holding any public
12 trust or employment, every [~~wilful~~] willful neglect to perform
13 such duty, where no special provision [~~shall have~~] has been
14 made for the punishment of such delinquency, [~~shall be deemed~~]
15 is a misdemeanor punishable by imprisonment in the county jail
16 for [~~not less than ten nor more than sixty days~~] a definite
17 term not to exceed one year or by a fine [~~of not less than~~
18 ~~(\$100) nor more than \$500] not to exceed one thousand dollars~~
19 (\$1,000).

20 B. The attorney general has primary authority to
21 investigate and prosecute an officer of the executive or
22 judicial department elected on a statewide basis for an alleged
23 violation of the provisions of this section; except if the
24 elected officer who allegedly violated the provisions is the
25 attorney general, the governor shall appoint a district

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underscoring material = new
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1 attorney who may investigate and prosecute the attorney
2 general. Upon the failure or refusal of the attorney general
3 to act pursuant to this subsection, the district attorney in
4 the county where the alleged violation occurred may investigate
5 and prosecute the elected officer for the alleged violation."

6 Section 14. Section 13-1-199 NMSA 1978 (being Laws 1984,
7 Chapter 65, Section 172) is amended to read:

8 "13-1-199. MISDEMEANOR.--

9 A. Any business or person [~~which~~] that violates the
10 Procurement Code is guilty of a misdemeanor.

11 B. The attorney general has primary authority to
12 investigate and prosecute an officer of the executive or
13 judicial department elected on a statewide basis for an alleged
14 violation of the provisions of the Procurement Code; except if
15 the elected officer who allegedly violated the provisions is
16 the attorney general, the governor shall appoint a district
17 attorney who may investigate and prosecute the attorney
18 general. Upon the failure or refusal of the attorney general
19 to act pursuant to this subsection, the district attorney in
20 the county where the alleged violation occurred may investigate
21 and prosecute the elected officer for an alleged violation."

22 Section 15. Section 19-7-6 NMSA 1978 (being Laws 1921,
23 Chapter 174, Section 6) is amended to read:

24 "19-7-6. OFFENSES BY OFFICERS OR EMPLOYEES OF STATE LAND
25 OFFICE--PENALTY.--

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1 A. It [~~shall be~~] is unlawful for any officers or
2 [~~employe~~] employees of the state land office:

3 (1) to act as agent or attorney for any
4 applicant for the purchase or leasing of public lands of this
5 state; [~~or~~]

6 (2) to [~~wilfully~~] withhold or conceal
7 wilfully any such application in order to give any applicant
8 priority or advantage over another; [~~or~~]

9 (3) to receive any money or thing of value as
10 a gift or compensation for aiding or conniving or conspiring to
11 aid in procuring priority of application; [~~or~~]

12 (4) directly or indirectly to aid or conspire
13 to aid one applicant as against another by any fraudulent means
14 [~~whatever~~] whatsoever; or

15 (5) to receive any money or thing of value as
16 a gift, compensation or otherwise from any person applying for
17 the lease or purchase of public lands [~~and~~].

18 B. Upon conviction [~~thereof~~] for any act enumerated
19 in Subsection A of this section, the offender shall be punished
20 by a fine of not [~~less than one hundred dollars (\$100.00) nor~~]
21 more than one thousand dollars [~~(\$1,000.00)~~] (\$1,000) or by
22 imprisonment [~~in the state penitentiary~~] for a definite term
23 [~~of~~] not [~~less than six months nor more than~~] to exceed three
24 years or [~~by~~] both [~~such fine and imprisonment in the~~
25 ~~discretion of the court~~].

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1 C. The attorney general has primary authority to
2 investigate and prosecute the commissioner of public lands for
3 an alleged violation of the provisions of this section. Upon
4 the failure or refusal of the attorney general to act pursuant
5 to this subsection, the district attorney in the county where
6 the alleged violation occurred may investigate and prosecute
7 the commissioner of public lands for the alleged violation."

8 Section 16. A new section of Chapter 30, Article 16 NMSA
9 1978 is enacted to read:

10 "[NEW MATERIAL] VIOLATIONS BY STATEWIDE ELECTED
11 OFFICERS--PRIMARY AUTHORITY OF ATTORNEY GENERAL.--The attorney
12 general has primary authority to investigate and prosecute an
13 officer of the executive or judicial department elected on a
14 statewide basis for an alleged violation of the provisions of
15 Section 30-16-1, 30-16-6, 30-16-8 or 30-16-9 NMSA 1978; except
16 if the elected officer who allegedly violated the provisions is
17 the attorney general, the governor shall appoint a district
18 attorney who may investigate and prosecute the attorney
19 general. Upon the failure or refusal of the attorney general
20 to act pursuant to this section, the district attorney in the
21 county where the alleged violation occurred may investigate and
22 prosecute the elected officer for the alleged violation."

23 Section 17. A new section of Chapter 30, Article 23 NMSA
24 1978 is enacted to read:

25 "[NEW MATERIAL] VIOLATIONS BY STATEWIDE ELECTED

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underscoring material = new
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1 OFFICERS--PRIMARY AUTHORITY OF ATTORNEY GENERAL.--The attorney
2 general has primary authority to investigate and prosecute an
3 officer of the executive or judicial department elected on a
4 statewide basis for an alleged violation of any of the
5 provisions of Sections 30-23-1 through 30-23-6 NMSA 1978;
6 except if the elected officer who allegedly violated the
7 provisions is the attorney general, the governor shall appoint
8 a district attorney who may investigate and prosecute the
9 attorney general. Upon the failure or refusal of the attorney
10 general to act pursuant to this section, the district attorney
11 in the county where the alleged violation occurred may
12 investigate and prosecute the elected officer for the alleged
13 violation."

14 Section 18. A new section of Chapter 30, Article 24 NMSA
15 1978 is enacted to read:

16 "[NEW MATERIAL] BRIBERY INVOLVING PUBLIC OFFICERS AND
17 EMPLOYEES--CONSTITUTIONAL VIOLATIONS--PRIMARY AUTHORITY OF
18 ATTORNEY GENERAL.--The attorney general has primary authority
19 to investigate and prosecute an officer of the executive or
20 judicial department elected on a statewide basis for an alleged
21 violation of any of the provisions of Sections 30-24-1 through
22 30-24-3.1 NMSA 1978; except if the elected officer who
23 allegedly violated the provisions is the attorney general, the
24 governor shall appoint a district attorney who may investigate
25 and prosecute the attorney general. Upon the failure or

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1 refusal of the attorney general to act pursuant to this
2 section, the district attorney in the county where the alleged
3 violation occurred may investigate and prosecute the elected
4 officer for the alleged violation."

5 Section 19. Section 30-26-1 NMSA 1978 (being Laws 1963,
6 Chapter 303, Section 26-1) is amended to read:

7 "30-26-1. TAMPERING WITH PUBLIC RECORDS.--

8 A. Tampering with public records consists of:

9 [~~A-~~] (1) knowingly altering any public record
10 without lawful authority;

11 [~~B-~~] (2) any public officer or public employee
12 knowingly filing or recording any written instrument, judicial
13 order, judgment or decree in a form other than as the original
14 thereof in fact appeared;

15 [~~C-~~] (3) any public officer or public employee
16 knowingly falsifying or falsely making any record or file,
17 authorized or required by law to be kept;

18 [~~D-~~] (4) any public officer or public employee
19 knowingly issuing or causing to be issued any false or untrue
20 certified copy of a public record; or

21 [~~E-~~] (5) knowingly destroying, concealing,
22 mutilating or removing without lawful authority [~~and~~] any
23 public record or public document belonging to or received or
24 kept by any public authority for information or record or
25 pursuant to law.

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1 B. Whoever commits tampering with public records is
2 guilty of a fourth degree felony.

3 C. The attorney general has primary authority to
4 investigate and prosecute an officer of the executive or
5 judicial department elected on a statewide basis for an alleged
6 violation of the provisions of this section; except if the
7 elected officer who allegedly violated the provisions is the
8 attorney general, the governor shall appoint a district
9 attorney who may investigate and prosecute the attorney
10 general. Upon the failure or refusal of the attorney general
11 to act pursuant to this subsection, the district attorney in
12 the county where the alleged violation occurred may investigate
13 and prosecute the elected officer for the alleged violation."

14 Section 20. A new section of Chapter 30, Article 41 NMSA
15 1978 is enacted to read:

16 "[NEW MATERIAL] VIOLATIONS BY STATEWIDE ELECTED
17 OFFICERS--PRIMARY AUTHORITY OF ATTORNEY GENERAL.--The attorney
18 general has primary authority to investigate and prosecute an
19 officer of the executive or judicial department elected on a
20 statewide basis for an alleged violation of any of the
21 provisions of Sections 30-41-1 and 30-41-2 NMSA 1978; except if
22 the elected officer is the attorney general, the governor shall
23 appoint a district attorney who may investigate and prosecute
24 the attorney general. Upon the failure or refusal of the
25 attorney general to act pursuant to this section, the district

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1 attorney in the county where the alleged violation occurred may
2 investigate and prosecute an elected officer for the alleged
3 violation."

4 Section 21. Section 30-42-5 NMSA 1978 (being Laws 1980,
5 Chapter 40, Section 5) is amended to read:

6 "30-42-5. ENFORCEMENT AUTHORITY.--

7 A. Except as provided in Subsection B of this
8 section, the attorney general and the district attorneys of New
9 Mexico shall each have authority to enforce the criminal
10 provisions of the Racketeering Act by initiating
11 investigations, assisting grand juries, obtaining indictments,
12 filing informations and complaints and prosecuting criminal
13 cases.

14 B. The attorney general has primary authority to
15 investigate and prosecute an officer of the executive or
16 judicial department elected on a statewide basis for an alleged
17 violation of any of the provisions of the Racketeering Act;
18 except if the elected officer who allegedly violated the
19 provisions is the attorney general, the governor shall appoint
20 a district attorney who may investigate and prosecute the
21 attorney general. Upon the failure or refusal of the attorney
22 general to act pursuant to this subsection, the district
23 attorney in the county where the alleged violation occurred may
24 investigate and prosecute the elected officer for the alleged
25 violation."

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1 Section 22. Section 30-51-1 NMSA 1978 (being Laws 1998,
2 Chapter 113, Section 1) is amended to read:

3 "30-51-1. SHORT TITLE.--~~[Sections 1 through 5 of this~~
4 ~~act]~~ Chapter 30, Article 51 NMSA 1978 may be cited as the
5 "Money Laundering Act"."

6 Section 23. A new section of the Money Laundering Act is
7 enacted to read:

8 "[NEW MATERIAL] VIOLATIONS BY STATEWIDE ELECTED OFFICERS--
9 PRIMARY AUTHORITY OF ATTORNEY GENERAL.--The attorney general has
10 primary authority to investigate and prosecute an officer of the
11 executive or judicial department elected on a statewide basis
12 for an alleged violation of any of the provisions of the Money
13 Laundering Act; except if the elected officer who allegedly
14 violated the provisions is the attorney general, the governor
15 shall appoint a district attorney who may investigate and
16 prosecute the attorney general. Upon the failure or refusal of
17 the attorney general to act pursuant to this section, the
18 district attorney in the county where the alleged violation
19 occurred may investigate and prosecute the elected officer for
20 the alleged violation."

21 Section 24. Section 36-1-18 NMSA 1978 (being Laws 1909,
22 Chapter 22, Section 2, as amended) is amended to read:

23 "36-1-18. DUTIES OF DISTRICT ATTORNEY.--

24 A. Each district attorney shall:

25 (1) prosecute and defend for the state in all

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1 courts of record of the counties of [~~his~~] the district
2 attorney's district all cases, criminal and civil, in which the
3 state or any county in [~~his~~] the district may be a party or may
4 be interested, except as otherwise provided by law;

5 (2) represent the county before the board of
6 county commissioners of any county in [~~his~~] the district
7 attorney's district in all matters before the board whenever
8 requested to do so by the board, and [~~he~~] the district attorney
9 may appear before the board when sitting as a board of
10 equalization without request;

11 (3) advise all county and state officers
12 whenever requested; and

13 (4) represent any county in [~~his~~] the district
14 attorney's district in all civil cases in which the county may
15 be concerned in the supreme court or court of appeals, but not
16 in suits brought in the name of the state.

17 B. A district attorney may contract with an Indian
18 nation, tribe or pueblo within the boundaries of the district
19 attorney's judicial district for the purpose of authorizing the
20 district attorney or [~~his~~] the district attorney's staff to:

- 21 (1) serve as a tribal prosecutor; or
22 (2) prosecute alleged violations of tribal
23 codes by tribal members in tribal courts."

24 Section 25. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2009.

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